tion. But no potent force is operative to produce such a result, since state differences in the statement or application of choice of law rules no longer create constitutional questions.[30] The absence of a judicially developed uniform test and the unlikelihood of uniform state or federal legislation[31] point to continued inadequate treatment of these choice of law problems—a result particularly unfortunate because of the growth of mass communication.

DEBT COLLECTION BY BOYCOTT AS A "LABOR DISPUTE"

The respondent, a delicatessen proprietor, found that the delivery of bread from Hinkle's Bakery at the noon hour was inconvenient and "required" Hinkle's truck driver to deliver at another hour. After Hinkle's Bakery informed the respondent that it would no longer supply her, she was able to arrange a satisfactory hour of delivery with another bakery. Three weeks later the business agent of the union representing Hinkle's drivers appeared at the delicatessen and demanded immediate payment of $150 purportedly due the driver. He also demanded that the respondent stop selling a non-union made item which she had been carrying, and stated that the union would prevent all shipments of bakery, milk, and dairy products to her store from any source if these demands were not satisfied. According to the respondent, she then discontinued sale of the non-union made item and made payment of the amount requested, by check, to the bakery. The check, which had been turned over to the union business agent by the bakery, was returned with a letter saying that it could not be accepted in settlement because "it was $12.22 short of the amount which is owed to our member." The next day the respondent was informed by her new supplier that no more deliveries could be made, since the union had threatened to pull out all of its drivers if any more products were sold or delivered to the respondent. After a more extensive boycott had been established, with pickets parading in front of the delicatessen store, a federal district court granted the respondent's petition for an injunction pendente lite restraining both boycotting and picketing by the union. Upon appeal of the single question of whether the case involved a labor dispute under the terms of the Norris-LaGuardia Act, the Court of Appeals for the District of Columbia affirmed the lower court's decision that no labor dispute existed.[1] On certiorari, the Supreme Court affirmed, three justices dissenting. *Bakery Sales Drivers Local Union No. 33 v. Wagshal.*[2]

The Supreme Court, in a brief opinion, examined the three incidents com-

[30] O'Meara, Constitutional Aspects of the Conflict of Laws: Recent Developments, 27 Minn. L. Rev. 500 (1943).

[31] The Choice of Law in Multistate Defamation and Invasion of Privacy: An Unsolved Problem, 60 Harv. L. Rev. 941, 951 (1947).

[1] Bakery Sales Drivers Local Union No. 33 v. Wagshal, 161 F. 2d 380 (App. D.C., 1947).

[2] 333 U.S. 437 (1948).

prising the union's claim that a labor dispute existed. The controversy over the hour of delivery was characterized as "dead" and as "not involved in the subsequent dispute with the union, or in the boycott against which the injunction was issued." The disagreement over the bill was said to be a "business controversy" since, on the basis of uncontroverted allegations, the driver would receive his pay whether or not the respondent paid her bill, and, therefore, there was no dispute concerning "a condition of his employment." In accordance with the affidavit attached to the "answer to the motion to dismiss," which served as an allegation rather than proof, and which was not denied by the petitioner, the Court described the sale of the non-union made item as "not a bona fide bone of contention, but a mere pretext"[3] and concluded that the boycott was addressed only to the question of the payment of the bill. As a result, it was held that no labor dispute existed and, therefore, that the Norris-LaGuardia Act could not apply. Consequently, the Court held that the order for the injunction was not appealable. Justices Black, Douglas, and Murphy dissented without opinion. Presumably, a strong dissent could be built on the view that, despite the unique facts of the case, the majority opinion cuts unnecessarily and perhaps dangerously into the protective mantle of the Norris-LaGuardia Act. This view was expressed by Judge Edgerton, dissenting in the Court of Appeals decision.[4]

The majority opinion of the Court of Appeals contained an extensive discussion of the legitimacy of the union's objectives and the necessity of balancing the conflicting interests involved which, combined with the nature of the Supreme Court's affirmance, place upon the case the imprint of the "illegal purpose" doctrine. That the existence of a labor dispute under Section 13 of the Norris-LaGuardia Act[5] should depend upon a court's conception of a "bona fide labor controversy, founded upon issues involving the protection of labor in pursuing its legitimate objectives"[6] is surprising in view of the cases denying injunctive relief where the dispute in question was prompted by such motives as revenge,[7] compelling payment of a "sticker fee" in violation of the Sherman Act,[8] and securing employment of Negroes.[9]

Both the Supreme Court and the Court of Appeals appeared to base their holdings largely on the ground that the respondent had never directly paid the

[3] Ibid., at 440.

[4] Bakery Sales Drivers Local Union No. 33 v. Wagshal, 161 F. 2d 380, 384 (App. D.C., 1947).

[5] 47 Stat. 73 (1932), 29 U.S.C.A. § 113 (1947).

[6] Bakery Sales Drivers Local Union No. 33 v. Wagshal, 161 F. 2d 380, 383 (App. D.C., 1947).

[7] Hunt v. Crumboch, 325 U.S. 821 (1945) (damages and injunctive relief sought under the Sherman Act).

[8] Peterson v. Master Plumbers' Ass'n, 44 F. Supp. 908 (Nev., 1942).

[9] New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938).

wages of the driver and that what was involved was therefore a "business controversy." Although traditionally wages have been defined as compensation paid to an employee by his employer,[10] the reliance placed by both courts upon the absence of any employer-employee relationship between the plaintiff and the defendant seems misplaced, since Section 13 of the Norris-LaGuardia Act expressly eliminates the necessity for the existence of a proximate employment relationship between the parties to a labor dispute.

That section was liberally interpreted by the Supreme Court in the *New Negro Alliance* case,[11] where it was held that a labor dispute existed despite the facts that a non-labor organization sought an indirect benefit and that no question of wages, hours, or conditions of employment was involved. In the instant case it could be said that the union had a direct pecuniary interest, since Hinkle's customers were realistically the primary source of his driver's wages, and in this sense Hinkle might be thought of as a mere conduit for the flow of compensation from his customers to his drivers. Although the facts of the case indicated that the driver would receive his pay whether or not the respondent paid Hinkle, nonetheless Hinkle's collection of bills due him was a genuine matter of economic concern to the union.[12] It can likewise be said that the question of the hour of delivery concerned "terms or conditions of [the driver's] employment." In addition, even if the sale of the non-union made item was not a bona fide controversy, it was still a disputed point, so that it might be concluded, on that basis alone, that the case was one "involving or growing out of a labor dispute."

However, it is not difficult to appreciate the position of the majority in both the Supreme Court and the Court of Appeals decisions, for the whole amount due could easily have been collected in a small claims court if a bona fide debt existed. By choosing instead to exert the economic coercion of a boycott[13] to collect a debt of $12.22 the union was merely flexing its muscles. Such a resort to self-help was unnecessary, since an adequate remedy at law has always existed for the recovery of unpaid wages; indeed, the law grants the holder of such

[10] "[A] compensation given to a hired person for his or her services." Bouvier, Law Dictionary 3417 (1914). "[A]greed compensation for services rendered by the workmen, clerks, or servants . . . , those who have served [an employer] in a subordinate or menial capacity. . . ." In re Gurewitz, 121 Fed. 982, 983 (C.C.A. 2d, 1903).

[11] New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938).

[12] In Lichterman v. Laundry & Dry Cleaning Drivers Union Local No. 131, 204 Minn. 75, 282 N.W. 689 (1938), the court found that the union involved had a direct interest in prices charged customers by an employer, and injunctive relief was refused under Minnesota's little Norris-LaGuardia Act.

[13] The Court of Appeals pointed out that the "boycott . . . was successful in keeping appellee from purchasing bread either from bakers or retail stores in Washington or surrounding territory, even to the extent of a single loaf of bread." Bakery Sales Drivers Local Union No. 33 v. Wagshal, 161 F. 2d 380, 381 (App. D.C., 1947). In addition to the injunctive relief sought, the plaintiff asked for damages in the amount of $50,000, along with an equal amount of punitive damages.

a claim high preference rating over other types of creditors.[14] The resort to self-help here, moreover, violates a basic premise of any system of jurisprudence, since the existence of a bona fide debt is a fact properly determinable by a court, not by the relative strength of the two parties.[15]

The final decision is further strengthened if unions are considered on a par with businessmen,[16] since trade associations have been restrained from exerting combined pressure in the form of a concerted refusal to deal with an alleged debtor of one of their members. The court in *Heim Brewing Co. v. Belinder*[17] denounced such an extra-legal mode of debt collection, emphasizing the potentiality for extortion inherent in such a self-help measure. The same danger may be present in a policy which would permit the union in the instant case to enforce its claim with a boycott; the fact remains, however, that Congress has expressed its intent to apply a contrary rule where labor activity is involved.[18] Thus, even though the decision here protected the legitimate property interests of the respondent[19] while working little hardship to the union, it seems that the narrow scope of equity power left to the courts by the Norris-LaGuardia Act[20]

[14] This policy is exemplified by the Bankruptcy Act and various state statutes such as the one in Illinois reading "no personal property shall be exempt from levy of attachment or execution when the debt or judgment is for the wages of any laborer or servant. . . ." Ill. Rev. Stat. (1947) c. 52, § 16.

[15] In Bowe v. Judson C. Burns, Inc., 46 F. Supp. 745 (Pa., 1942), it was held that an action by employees, who were engaged in interstate commerce and who had worked overtime but had not been paid the overtime rate required by the Fair Labor Standards Act, was not a "labor dispute" within the meaning of the Norris-LaGuardia Act. The court distinguished a situation concerning unpaid wages from one involving a controversy as to rates of pay on the ground that in the former case the terms and conditions of employment were fixed and settled, so that there could be no dispute concerning them. See Dorchy v. Kansas, 272 U.S. 306 (1926).

[16] Gregory, Labor and the Law 191 (1946).

[17] 98 Mo. App. 590, 71 S.W. 691 (1903); United States v. King, 250 Fed. 908 (D.C. Mass., 1916) (semble); Swift & Co. v. United States, 196 U.S. 375 (1905) (semble). The rationale of the contrary line of decisions, exemplified by Brewster v. Miller's Sons Co., 101 Ky. 368, 41 S.W. 301 (1897), and McCarter v. Baltimore Chamber of Commerce, 126 Md. 131, 94 Atl. 541 (1915), is that such agreements do not constitute an offense at common law, since a person has the right to enter into a business undertaking with anyone he chooses, free from any legally imposed obligation to do otherwise. The Brewster case involved a situation of peculiar hardship, since the association involved included all the undertakers in the alleged debtor's community, all of whom refused to render the services necessary for the burial of his wife. Yet the court held that even if the claim asserted had no foundation in either "morals or law," if the members of the association chose to be influenced by it, the alleged debtor had no cause of action against them.

[18] Peterson v. Master Plumbers' Ass'n, 44 F. Supp. 908, 911 (Nev., 1942).

[19] The emphasis placed by the Court of Appeals upon the fact that the union activity tended to "ruin a legitimate business over a difference of twelve dollars and twenty cents" evokes speculation as to whether a contrary result would have been reached if the sum in question had been larger. The characterizing of the relationship of the parties as "casual" and the union's objective as "ridiculous" appears to be an attempt at justifying an erroneous decision by an appeal to rhetoric.

[20] Section 13, by defining the allowable area of economic conflict, substituted a broader conception of union economic interest for the narrow prevailing view of federal judges, both

was exceeded. If injunctive relief had been withheld, the respondent could still have sought damages in a subsequent action at law on the theory that the boycott had subjected her to unjustifiable tortious conduct.[21] Moreover, and perhaps most striking, the Supreme Court's opinion emphasized the letter rather than the spirit of the Act.[22] Although in the light of the facts presented the decision creates little cause for sympathy with the union, the danger of a return to a system of judicial settlement of labor disputes by injunction may be so real as to militate against even the slightest inroads on the Act.[23]

ILLINOIS TORT LIABILITY OF CHARITABLE CORPORATIONS

The infant plaintiff was severely injured in a fall from the unguarded roof of a wooden ticket office used as a part of the St. Philip Stadium, owned and operated by the Servite Fathers, an Illinois charitable corporation. The plaintiff sued on the theory that the wooden roof was an attractive nuisance, easily accessible to children and negligently maintained by the defendant in an unsafe condition. The defendant pleaded that because of its eleemosynary character it could not be held liable. Admitting the charitable character of the defendant corporation, the plaintiff nevertheless asserted liability because, prior to the accident, the Servite Fathers had procured a comprehensive general liability policy which effectively protected its trust fund. Attached to this policy was a rider which, in part, provided: "1. the company . . . will not use, either in the adjustment of claims or in the defense of suits against the insured, the immunity of the insured from tort liability, unless requested by the insured to interpose such defense."[1] The trial court reasoned that the defendant was absolutely immune from liability and that the indemnifying insurance did not create a liability where none had previously existed. On appeal, the Illinois Appellate Court reversed on the ground that the insurance policy created a separate fund, apart from the trust fund of the charitable corporation, which could be used to compensate any person injured as a result of the negligence of the defendant. *Wendt v. Servite Fathers.*[2]

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at common law and under Section 20 of the Clayton Act. See Gregory, Labor and the Law 184–99 (1946).

[21] Ibid., at 120–27.

[22] Report of the Senate Committee on the Judiciary, S. Rep. 163, 72d Cong. 1st Sess., at 25 (1932). "Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. . . . In order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons who are entitled to invoke the protections. . . ."

[23] See Watt, The Divine Right of Government by Judiciary, 14 Univ. Chi. L. Rev. 409 (1947).

[1] Wendt v. Servite Fathers, 332 Ill. App. 618, 620, 76 N.E. 2d 342, 343 (1947).

[2] 332 Ill. App. 618, 76 N.E. 2d 342 (1947).